TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. [redacted].

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

(27,496)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 741.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 4, 1920.

1 I. *Petition and Exhibits A, B, C, D and E.*

Filed March 30, 1916.

In the Court of Claims of the United States.

No. 33214.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

vs.

THE UNITED STATES.

Petition.

To the Honorable the Chief Justice and Associate Justices of the Court of Claims:

Your petitioner, the Atchison, Topeka and Santa Fe Railway Company, respectfully represents:

I.

That petitioner is a corporation organized and existing under the laws of the State of Kansas, and owns and operates, and at all times hereinafter stated, did own and operate, among other railway properties, lines of railway from Bayard, New Mexico, to Texas City, Texas; Leavenworth, Kansas, to San Antonio, Texas; Fort
2 Bliss and El Paso, Texas, to Wingate, New Mexico; Leavenworth, Kansas, to Galveston, Texas, and Trinidad, Colorado, to Fort Oglethorpe, over which lines it operates its own freight and passenger trains, and in conjunction with other railway companies.

II.

Claimant is engaged in the transportation of passengers and freight for hire, and at all times during the performance of the services hereinafter set forth, had in force and on file with the Interstate Commerce Commission and published as required by law, tariffs showing the rates charged for transporting passengers and freight between points on its lines of railroad and in connection with other railroads with which it connected.

III.

At various times during the years 1914 and 1915, claimant transported, at the request of officers of the United States having prior authority for that purpose, certain officers and enlisted men of the United States army, the details of which transportation being set forth in the statement of account hereto attached and made a part hereof, marked Claimant's Exhibit "A."

IV.

That for the transportation thus furnished the claimant submitted bills based upon its published tariffs and authorized rates, being the lowest rate open to the public for like services, to wit: the individual rate applicable between the initial point and destination.

V.

That in the settlement of claimant's bills the auditor for the
3 War Department allowed for the service on the basis of the individual fare for part of the distance traveled and the party rate for the balance, thereby disallowing and deducting from the claimant's bills $4,063.29 as shown in Exhibit "A."

VI.

That upon appeal by claimant to the Comptroller of the Treasury, the action of the auditor for the War Department in applying such rates and in making such deductions was affirmed as per copy of Comptroller's opinion of June 25, 1915, hereto attached, and made a part hereof marked "Exhibit B."

VII.

Claimant, on July 26, 1915, as per copy hereto attached and marked "Exhibit C," submitted to the Interstate Commerce Commission a copy of the Comptroller's decision of June 25, 1915, hereinabove referred to, with request that claimant be advised whether the rate used by the Comptroller, being a combination of an individual and party rate, was one which claimant could lawfully accept.

VIII.

Claimant received from the Interstate Commerce Commission a reply dated July 28, 1915, a copy of which is hereto attached and marked "Exhibit D," wherein claimant was advised that the rate used by the Comptroller in his decision of June 25, 1915, supra, was not a legal rate and that claimant was not authorized to use the same.

IX.

Claimant submitted copy of the communication of July 28, 1915,
from the Interstate Commerce Commission with a motion
4 for review and reconsideration of the Comptroller's settlement of June 25, 1915, and this motion was, on August 31, 1915, denied by the Comptroller, as per copy of his decision hereto attached, and marked "Exhibit E."

X.

The United States for the transportation furnished by claimant was entitled to the lowest rate open to the public, which was the rate used by claimant in submitting its account. The rate used by the accounting officers of the United States in their settlement of these accounts was a combination of a party rate for part of the distance traveled and an individual rate for the balance of the distance, being a rate note open to the public but one which claimant was forbidden by law to quote or accept.

XI.

No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof; no assignment or transfer of this claim or of any part thereof or interest therein has been made; the claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs; claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government. Claimant is a citizen of the United States and claims four thousand and sixty-three dollars and twenty-nine cents ($4,063.29).

THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY,
By BRITTON AND GRAY,
Attorneys for Claimant.

3 CITY OF WASHINGTON,
District of Columbia, ss:

Alexander Britton, being duly sworn, deposes and says:
I am a member of the firm of Britton and Gray, attorneys for the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

ALEX. BRITTON,
Attorney-in-Fact for Claimant.

Subscribed and sworn to before me this 29th day of March, 1916.
[SEAL.] CHESTER R. SMITH,
Notary Public.

Statement of Claim of A., T. & S. F. Ry. vs. United States Government, Account Movement United States Troops, 1914-1915.

Item.	Acct. No.	No. mem.	From—	To—	Date.	Fare claimed.	Fare tendered.	Amount claimed.	Amount tendered.	Diff.
1	3556	10	Bayard, N. M..	Texas City.....	4/14	$31.10	25.05	$311.00	$250.50	$60.50
2	3544	25	Leavenworth ..	San Antonio...	4/14	20.16	14.75	504.00	368.75	135.25
3	3692	411	Ft. Bliss.....	Wingate	5/14	12.80	10.13	5,260.80	4,163.43	1,097.37
4	3692	192	" "	Wingate & Ret..	5/14	25.69	16.88	4,915.20	3,231.36	1,683.84
5	3692	135	El Paso.....	Wingate	5/14	12.55	9.88	1,694.25	1,333.80	360.45
6	3934	13	Leavenworth ..	Galveston	7/14	20.61	16.51	267.93	214.63	53.30
7	4214	109	El Paso.....	Wingate	9/14	12.55	9.88	1,367.95	1,076.92	291.03
8	4642	181	Trinidad	Ft. Oglethorpe..	1/15	24.65	(181)23.96	4,483.97	4,359.07	124.89
		2				11.16	(2)11.16			
9	4644	184	"	" " ..	1/15	24.78	(184)23.96	4,581.84	4,430.96	150.88
		2				11.16	(2)11.16			
10	4648	129	"	" " ..	1/15	25.48	(129)24.66	3,309.24	3,203.46	105.78
		2				11.16	(2)11.16			
			Grand total differences.....							$4,063.29

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7 EXHIBIT "B."

R. H. H. W. R. J.—9—D.

Appeals Nos. 24,433 and 24,434.

Treasury Department.

Office of Comptroller of the Treasury.

June 25, 1915.

The Atchison, Topeka and Santa Fe Railway Company applied March 5, 1915, for a revision of the action of the auditor for the War Department in disallowing $135.25 by settlement No. 21,978, September 30, 1914, and $53.30 by settlement No. 22,418, December 10, 1914.

The facts are as follows:

Transportation was furnished in the first case from Leavenworth, Kansas, to San Antonio, Texas, for 25 men per request 320,146, April 3, 1914, which called for lowest first-class limited tickets "by A., T. & S. F., G., C. & S. F., and I. & G. N."

In the other case transportation was furnished from Leavenworth, Kansas, to Galveston, Texas, for 13 men per request No. 324,158, July 27, 1914, which called for party rate ticket "by A., T. & S. F., and G., C. & S. F."

A single ticket for the through transportation was furnished in each case for the entire party.

The company claimed upon the basis of the individual rate applicable between the initial point and destination. The auditor allowed for the service on the basis of the individual fare, Leavenworth to Kansas City, and the party rate from Kansas City to destination.

In a decision of August 15, 1913 (20 Comp. Dec., 77), it was held, quoting from syllabus, that:

8 "Where transportation is requested by the Government for a number of persons without specifying party ticket and one ticket is issued for the entire party, the rate to be applied therefor is the rate charged the public for a like party traveling on one ticket."

In each of the cases now under consideration the movement was in fact a party movement, one ticket being issued for the entire party and a party rate, if any was in effect, is the proper rate to be paid for the service.

There is a substantial difference between party service and individual service, in that in the former case the entire number of passengers travel together as an entity, while in the latter case each individual is a separate entity to be dealt with by the company, for whom a separate ticket is furnished and accounted for by the conductor. (See my decision of April 20, 1914, 20 Comp. Dec., 750.) Thus

the service furnished on a party ticket is a different service from that on individual tickets and a lower rate is frequently applicable; but when a tariff provides no party rate for a service it will become necessary to pay the individual rate, though the entire number travel together on a single ticket.

Section 4 of the Interstate Commerce Act, as amended by the act of June 18, 1910 (36 Stats., 547), provides:

"That it shall be unlawful for any common carrier subject to the provisions of this act * * * to charge any greater compensation as a through route (evidently should be rate) than the aggregate of the intermediate rates subject to the provisions of this act; * * *

The Interstate Commerce Commission has held that:

"A carrier may apply to through tickets fares to or from points to or from which no joint fare is published by using lawfully published bases, locals, or proportionals in connection with other lawfully published tariffs." (See Rule 36, of Tariff Circular 18-A.)

9 It is perfectly reasonable that the intermediate rates, the aggregate of which is the maximum lawful rate, for the through service must be the rates applicable for the class of service requested and furnished. Where no through party rates are published it would therefore appear that the maximum lawful party rate would be the aggregate of the intermediate party rates. (See my decision of October 2, 1913, 20 Comp. Dec., 204.)

This is in accordance with the principle that the through rate is made by combination of like rates. The through individual rate being made by combination of intermediate individual rates, and the through party rate by the combination of intermediate party rates. When a rate is not specifically named for the kind or class of service the rate that under the tariffs would be applied to that particular service should be considered the rate therefor. Thus in the absence of the second-class rate the first-class rate would be applied to second-class service, and in the absence of specific party rate the individual rate would be applied for party service.

In the cases under consideration there appears to have been no through party rate. However, party rates from Kansas City to the respective destinations are named, while the only rate named from Leavenworth to Kansas City is an individual rate. Therefore a party traveling on a single ticket from Leavenworth to Kansas City would be obliged to pay the same rate per man for said party service as if individual tickets had been issued. The individual rate in such case thus becomes the party rate.

Under section 4 of the Interstate Commerce Act, as amended, supra, it is unlawful for any common carrier to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of the act.

By conference ruling No. 298, the Interstate Commerce Commission has held "that the fares must be constructed upon the basis of

being no higher than the lowest combination of fares that are
10 published and filed as available for interstate travel or in making up interstate fares."

A through party from Leavenworth to Galveston or San Antonio would therefore appear properly made from combination of party rates on file with the Interstate Commerce Commission. Kansas City being a prominent junction point would appear to be a proper point upon which such combination should be made. A party rate is specifically named from Kansas City to destination and the individual rate from Leavenworth to Kansas City is the rate required to be applied for the transportation furnished on a party ticket between said points. These rates are published in tariffs on file with the Interstate Commerce Commission and appear to be the proper basis for the making of a through party rate. Through party service having been rendered, it appears that a through party rate should be applied therefor, and not the rate required for individual service according to the company's claim.

The through party rate thus made would appear to be the lawful rate in accordance with section 4 of the Interstate Commerce Commission Act, as amended, supra, notwithstanding the holding of the Interstate Commerce Commission per conference ruling No. 268, which is as follows:

"The tariffs of certain carriers provide a 10-party fare from A to B, but no such fare from B to C. Upon inquiry whether it would be legal to ticket a party of ten from A to C on the basis of the party fare from A to B and the individual fares from B to C when such combination makes less than the joint through individual fare from A to C: Held, That while a party of ten, acting on their own initiative would have the right to use the party fare from A to B and to purchase such transportation as is available from B to C, the carriers may not ticket them through from A to C on such a combination and thus defeat their own published through fare."

The route through Kansas City appears to be entirely feasible and a usually traveled route for military traffic, and there-
11 fore the rate made to said point would appear properly applicable on military business and for service rendered by equalizing roads as in the present case.

The action of the auditor is therefore affirmed.

This revision is limited to the items indicated herein, and the right of revision as to all other items of the account is reserved.

War warrants Nos. 3555, for $368.75, and 6202, for $214.62, are herewith returned.

GEO. E. DOWNEY,
Comptroller.

EXHIBIT C.

July 26, 1915.

Honorable Interstate Commerce Commission, Washington, D. C.

SIRS:

By conference ruling No. 268, Commission held as follows:

"The tariffs of certain carriers provide a 10-party fare from A to B but no such fare from B to C. Upon inquiry whether it would be legal to ticket a party of ten from A to C on the basis of the party fare from A to B and the individual fares from B to C when such combination makes less than the joint through individual fare from A to C: Held, That while a party of ten, acting on their own initiative would have the right to use the party fare from A to B and to purchase such transportation as is available from B to C, the carriers may not ticket them through from A to C on such a combination and thus defeat their own published through fare."

The Atchison, Topeka & Santa Fe Railway Company on March 5, 1915, applied to the Comptroller of the Treasury for a revision of the action of the auditor for the War Department in disallowing
$135.25 by settlement No. 21,976, September 30, 1914, and
12 $53.30 by settlement No. 22,418, December 10, 1914.

The facts are substantially as follows:

"Transportation was furnished in the first case from Leavenworth, Kans., to San Antonio, Texas, for 25 men per request 320,146, April 3, 1914, which called for lowest first-class limited tickets 'by A., T. & S. F., G., C. & S. F. and I. & G. N.'

"In the other case transportation was furnished from Leavenworth, Kans., to Galveston, Texas, for 13 men per request No. 324,158, July 27, 1914, which called for party rate ticket 'by A., T. & S. F., and G. C. & S. F.'

"A single ticket for the through transportation was furnished in each case for the entire party.

"The company claimed upon the basis of the individual rate applicable between the initial point and destination. The auditor allowed for the service on the basis of the individual fare, Leavenworth to Kansas City, and the party rate from Kansas City to destination."

In the course of the Comptroller's opinion, on June 25, 1915, copy of which is attached hereto, he holds that a through party rate from Leavenworth to Galveston or San Antonio, would appear properly made from a combination of party rates on file with the Interstate Commerce Commission; that Kansas City being a prominent junction point would appear to be a proper point upon which such combination should be made, and that a proper through rate from Leavenworth to point of destination could properly be constructed by the combination of the individual rate from Leavenworth to Kansas City, and the party rate from Kansas City to destination, disregarding the fact that there is no party rate from Leavenworth to Kansas City. Referring to the existence of the individual rate from Leaven-

worth to Kansas City and the party rate from Kansas City to destination, the auditor states (page 5):

13 "These rates are published in tariffs on file with the Interstate Commerce Commission and appear to be the proper basis for the making of a through party rate. Through party service having been rendered it appears that a through party rate should be applied therefor, and not the rate required for individual service according to the company's claim.

"The through party rate thus made would appear to be the lawful rate, in accordance with section 4 of the Interstate Commerce Act, as amended, supra, notwithstanding the holding of the Interstate Commerce Commission per conference ruling No. 268" (quoting that conference ruling).

The action of the Comptroller of the Treasury in disallowing substantial amounts in the settlement of transportation bills, based on the theory and construction of the act, wholly different from the construction placed on the statute by the Commission in the conference ruling referred to, leaves the Santa Fe Company in the embarrassing position of having to accept the application of a rate which, tested by the statute and the Commission's construction thereof, would clearly be illegal. Nor is it at all clear that the Government, without the consent of the carrier, can apply a rate which if constructed by the carrier would result in a clear violation of the statute.

We believe that it will be readily apparent that the application of the Comptroller's decision by the various departments, in connection with the settlement of railroad transportation, would quickly result in a very considerable loss of revenue on passenger business of this character.

For these reasons the company earnestly desires to be advised whether, in the opinion of the Commission, its construction of the statute and its application of conference ruling No. 268 to the present case is correct or otherwise.

Copy of the decision of the Comptroller of the Treasury is attached hereto.

Yours very truly,

BRITTON & GRAY,
Attorneys A., T. & S. F. Ry. Co.

14 EXHIBIT "D."

Interstate Commerce Commission.

Washington, July 28, 1915. K.

Messrs. Britton & Gray,
1512 H Street N. W., Washington, D. C.

GENTLEMEN:

Your letter of the 26th instant, in which you enclosed copy of ruling of the Comptroller of the Treasury of June 25, 1915, has been considered by the Commission, and I am directed to say that the Commission adheres to the interpretations which it has heretofore

placed upon the law and also to the view expressed in its conference ruling No. 268 quoted in your letter and also in the decision of the Comptroller of the Treasury.

The act specifically provides that nothing contained therein shall be construed to prevent the issuance of mileage, excursion or commutation passenger tickets. The Commission has consistently held that in determining questions under the fourth section the rates or fares compared must be alike; for example, an import rate with an import rate. Practically all carriers subject to the act issue and permit the use of mileage, excursion, and commutation tickets. The fact that a standard one-way fare exceeds the aggregate of a mileage ticket to an intermediate point and an excursion fare from that intermediate point does not, in the judgment of the Commission, constitute the maintenance of a through charge which is in excess of the aggregate of the intermediate charges subject to the act, as provided in section 4 of the act.

It would be pleasant, of course, if there were no conflict between the views of the Commission and those expressed by the Comptroller of the Treasury, but after reconsideration of the matter the Commission's view- are as above stated.

Yours very truly,

E. E. CLARK,
Commissioner.

15 EXHIBIT "E."

Appeals Nos. 24,433-34.

Reconsideration.

Treasury Department.

Washington, August 31, 1915.

The Atchison, Topeka and Santa Fe Railway Co.,
Britton and Gray, Attorneys, Washington, D. C.

GENTLEMEN:

I have your letter of August 27, 1915, requesting a reconsideration of my decision of June 25, 1915, in which I sustained the action of the auditor for the War Department in settlements Nos. 21,976, September 30, 1914, and 22,418, December 10, 1914, in his disallowance on your accounts for the transportation of 25 men from Leavenworth, Kansas, to San Antonio, Texas, and 13 men from Leavenworth, Kansas, to Galveston, Texas, a single ticket being issued in each case for the entire party.

You cite certain rulings of the Interstate Commerce Commission against making rates for the through service as determined by the auditor and approved by my said decision. You state that:

"We are thus confronted with the anomalous situation of being advised by the rate-making bureau of the Government that we cannot make a through party rate by combination of an intermediate

through rate and an individual rate while another branch of the Government declines to pay on the only basis authorized by law and decides that notwithstanding the Interstate Commerce Commission it will make the rate in the manner forbidden."

It is a general principle of law that the sovereign power is not included in general legislative restrictions, and it is for the Comptroller to determine the proper amount to be paid from appropriated funds for Government transportation.

Section 4 of the Interstate Commerce Act, as amended June 18, 1910 (36 Stat., 539), provides that it shall be unlawful for
16 any common carrier subject to the provisions of the act to charge any greater compensation as a through rate than the aggregate of the intermediate rates.

These cases were given very careful consideration in connection with the Interstate Commerce Commission ruling and the law applicable thereto, and my decision thereon was rendered after due deliberation.

It may be noted that the Interstate Commerce Commission in a decision July 10, 1915, stated:

"In our view, no carrier receiving the equivalent of its full local fares to the junction may, in respect of combination of tickets severally subject to the act, whatever the character of the transportation issued and accepted by the connecting line, lawfully withhold provision for incidental services so constantly and universally in demand as those at which the proposed rules are directed."

By said decision the Interstate Commerce Commission required the cancellation of proposed rules prohibiting through checking of baggage and sale of through parlor or sleeping car tickets on combination tickets, by which combination a less through fare was received for the services than the published joint through rates.

It would appear therefore entirely consistent with this ruling that where the carrier receives its full rate for the service from Leavenworth to Kansas City, and the carrier from Kansas City to San Antonio receives its full rate for the service rendered between said points, that the incidental services connected with the through service from Leavenworth to San Antonio could not be withheld and the service under consideration was settled upon equalization of said route.

In your argument for reconsideration nothing further has been adduced than has been heretofore considered. I have no reason to change my opinion in the matter. My decision as originally rendered is therefore affirmed.

Respectfully,

GEO. E. DOWNEY,
Comptroller.

17 II. *General Traverse.*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

III. *Supplemental Petition.*

Filed by Leave of Court July 16, 1919.

To the Honorable The Chief Justice and Associate Justices of the Court of Claims:

Comes now the claimant, by its attorneys, and adopting the allegations of the original petition, for its supplemental petition shows to the Court the following facts:

I.

That in addition to the transportation referred to in said original petition, set forth in Exhibit A thereof, claimant also transported, at the request of officers of the United States having proper authority for that purpose, certain officers and enlisted men of the United States Army, to-wit, as follows:

"Bill No.	Date.	Amount.	Amount paid.	Amount unpaid.
P-1279	Sept., 1914.....	8,617.40	7,477.31	1,140.09
P-1281	" 1914.....	27,876.00	25,568.95	307.05
P-1360	Nov., 1914.....	711.72	533.52	178.20
Total not allowed by the Government.....				1,625.34"

II.

That for the transportation thus furnished claimant submitted bills based upon its published tariffs and authorized rates, being the lowest rates open to the public for like services, to-wit: the individual rate applicable between the initial point and destination.

III.

That in the settlement of claimant's bills the Auditor for the War Department allowed for the service on the basis of the individual fare for part of the distance traveled and the party rate for the
18 balance, thereby disallowing and deducting from claimant's bills the sum of $1,625.34, as shown above.

IV.

That in addition to the amount set forth in the original petition herein, the sum of one thousand six hundred twenty-five dollars and thirty-four cents ($1,625.34) is now justly due and owing your petitioner from the United States; that there exists in favor of the United States no debt, claim or set-off by which said amount may or should be reduced; that no part of said claim has been paid and said claim has not been assigned in whole or in part.

Wherefore your petition- prays for judgment against the United States in the sum of one thousand six hundred twenty-five dollars and thirty-four cents ($1,625.34) in addition to the sum claimed in the original petition herein.

ATCHISON, TOPEKA & SANTA FE RAILWAY CO.,
By BRITTON & GRAY,
Its Attorneys in Fact.

DISTRICT OF COLUMBIA, *ss:*

Before me, Chester R. Smith, a Notary Public in and for the District of Columbia, personally appeared Alexander Britton, to me known to be a member of the firm of Britton & Gray, Attorneys in Fact for the Atchison, Topeka & Santa Fe Railway Company, and made oath before me that the allegations of the foregoing petition are true to the best of his knownedge, information and belief.

ALEX. BRITTON.

Subscribed and sworn to before me this 16th day of July, A. D., 1919.

[SEAL.] CHESTER. R. SMITH,
Notary Public.

BRITTON & GRAY,
Attorneys for Claimant.

19 IV. *History of Proceedings.*

On February 17, 1919, the case was argued and submitted by Mr. Alexander Britton, for the claimant, and by Mr. Horace S. Whitman, for the defendants.

On March 17, 1919, the court filed an order remanding the case for reargument.

On October 23, 1919, the case was again argued and submitted by the same counsel.

On December 1, 1919, the court filed a conclusion of law dismissing claimant's petition.

On December 15, 1919, the court filed an order vacating, setting aside and withdrawing former order of dismissal.

On January 12, 1920, the court filed findings of fact and conclusion of law which are as follows:

V. *Findings of Fact and Conclusion of Law. Entered January* 12, 1920.

The court, upon the evidence and the stipulation of the plaintiff by its attorney and the defendants by its Assistant Attorney General, such stipulation being in writing and filed in the cause, makes the following

Findings of Fact.

I.

Claimant is a corporation organized and existing under the laws of the State of Kansas, and either itself or in conjunction with other connecting railways owns and operates, and at all times hereinafter stated did so own and operate lines of railway from Bayard, New Mexico, to Texas City, Texas; Leavenworth, Kansas, to San Antonio and Galveston, Texas; Fort Bliss and El Paso, Texas, to Wingate, New Mexico; and Trinidad, Colorado, to Fort Oglethorpe, Ga., over which lines, and in conjunction with connecting carriers, it operated passenger and freight trains.

20 II.

Claimant is engaged in the transportation of passengers and freight for hire, and at all times during the performance of the service hereinafter set forth had in force, and on file with the Interstate Commerce Commission, and published, as required by law, tariffs showing the rates charged for transporting passengers and freight between points on its lines of railroad and in connection with other railroads with which it connected.

The tariffs so authorized, and on file and in force showed the rates applicable to the transportation furnished between the points named, and there were no through party rates authorized by these or any other tariffs from the points of origin to points of destination.

Though there were no through rates in effect between the points of origin and destination of the various movements hereinafter referred to, there were duly in effect party rates over the plaintiff's lines or lines of connecting carriers between the point of origin of the movements and intermediate points, *or between the intermediate points* or between intermediate points and the points of destination. These party rates were on file in the Interstate Commerce Commission and published as required by law.

III.

At various times during the years 1914 and 1915, the claimant company transported, at the request of officers of the United States having proper authority for that purpose, certain officers and enlisted men of the United States Army. Following is a detailed statement of the various movements of troops showing: (*a*) the number of men; (*b*) the points of origin and points of destination; (*c*) the through rates available for the public under the published tariffs; (*d*) the kinds of tickets furnished; (*e*) the contract rates where a contract was in effect, and (*f*) the bases upon which the settlements were made by the defendant.

Item No. 1.—10 Passengers from Bayard to Texas City, Texas.

Transportation request called for "party rates if available." Party ticket furnished from Bayard, N. M., to Deming, N. M. Individual tickets from Deming, N. M., to Texas City, Texas. Through fare from Bayard, N. M., to Texas City, Texas, is made $5.35 Bayard to El Paso; $25.60 El Paso to Texas City Junction; plus Texas City Terminal Local 15¢ to Texas City.

21 The through rate, using the party rate to Deming, is as follows:

Bayard to Deming, party fare	$1.20
Deming to Houston, individual fare	27.95
Houston to Texas City Junction	1.15
Texas City Terminal	.15
	$30.45

The defendant settled bill No. 3556 upon a combination of party rates shown by the tariffs from Bayard to El Paso and El Paso to Texas City.

Amount claimed	$311.00
Amount allowed	250.50
Amount disallowed	60.50

Item No. 2.—25 men from Leavenworth, Kansas, to San Antonio, Texas.

One ticket marked "Good for 25 people" furnished.

The through fare from Leavenworth to San Antonio is $20.16 net, derived from the commercial fare, or $21.80 shown in Trans-Missouri West Bound Joint Passenger Tariff 61 I. C. C., No. 6, published by P. C. Davidson, agent.

The defendant settled bill No. 3544 upon the basis of the individual rates, Leavenworth to Kansas City, Kansas, 55¢ plus a party rate of $15.30 gross, $14.20 net land grant rate, or a total of $14.75 per capita.

Amount claimed	$504.00
Amount allowed	368.75
Amount disallowed	135.25

Item No. 3.—411 Men. Fort Bliss, Texas, to Wingate, N. M.

Item No. 4.—192 Men, Fort Bliss to Wingate, N. M.

Eight tickets were provided for the movements in items 3 and 4, each good for a number of persons varying from 49 to 243. These movements were made under contract dated the first day of May, 1914, between the parties at a rate agreed upon of $12.80 per

22 man. It was provided in the contract: "The above rates are net cash not subject to further deduction unless it be subsequently found that they are in excess of regular tariff rates, less land grant or other lawful deductions to which the Government is entitled, when lower rate will govern in settlement."

The rate of $12.80 per capita was arrived at on the basis of local party fare of $6.70 El Paso to Albuquerque; individual fare, $5.85 gross Albuquerque to Wingate, and 25¢ Fort Bliss to El Paso.

Settlement of bill No. 23178 was made upon the basis of the bid rate of $12.80, except that land-grant deduction of $2.67 was made from the individual rate of $5.85, gross rate El Paso to Albuquerque, making a net rate of $3.18 between El Paso and Albuquerque, or a total of $10.13 Fort Bliss to Wingate, N. M.

Item No. 5.—135 Men El Paso to Wingate, N. M.

One ticket furnished marked "Good for 135 men."

The same rates apply and were applied by the defendant in making settlement of item 5 as were applied in items 3 and 4:

Total amount claimed in items 3, 4 and 5 was $11,870.25. The amount allowed was $8,728.59, and the amount disallowed was $3,141.66.

Item No. 6.—13 Passengers, Ft. Leavenworth to Galveston, Texas.

One ticket marked "Good for 13 people" furnished.

The through rate from Leavenworth to Galveston, Texas, was $20.61 net, derived from the commercial fare of $22.25 shown in Trans-Missouri West Bound Tariff No. 62, I. C. C. No. 7, published by P. C. Davidson, Agent.

Settlement bill No. 3934 was made upon the following basis: Local individual rate, Leavenworth to Kansas City; party rate from Kansas City to Galveston.

Amount claimed	$267.93
Amount allowed	214.63
Amount disallowed	53.30

Item No. 7.—109 Passengers, El Paso to Wingate.

One ticket marked "Good for 109 passengers" furnished.

This was a movement similar to movements in items 3, 4 and 5, except there was no contract for the movement, and the same rates were applicable and applied in settlement.

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Amount claimed	$1,367.95
Amount allowed	1,076.92
Amount disallowed	291.03

Item No. 8.—180 Men, Trinidad, Colorado, to Fort Oglethorpe, Ga.

One ticket marked "Good for 180 people" furnished.

The through rate of $25.65 net was derived from commercial fare $31.13, Trinidad to Chattanooga, plus 30¢ Chattanooga to Fort Oglethorpe.

Settlement was made by defendant bill No. 4642 upon the basis of individual rate, Trinidad to Kansas City, party rate Kansas City to Chattanooga, plus 30¢ local rate to Fort Oglethorpe.

Disbursing officer used the improper party rate Kansas City to Chattanooga, being 8 per cent. per capita less than the proper rate. If the use of party rates is upheld the claimant would be entitled to recover $24.04 upon this item.

Amount claimed	$4,883.97
Amount allowed	4,359.08
Amount disallowed	124.89

Item No. 9.—184 Men, Trindad to Ft. Oglethorpe.

One ticket marked "Good for 184 men" furnished.

The same rate applicable and same rates applied as in item No. 8.

Amount claimed	$4,581.84
Amount allowed	4,430.96
Amount disallowed	150.88

Item No. 10.—129 Men from Segunde, Colorado, to Fort Oglethorpe, Ga., and 2 Men from St. Louis, Mo., to Fort Oglethorpe, Ga.

One ticket marked "Good for 131 people" furnished. Settlement was made upon the same basis as items 8 and 9, with the additional charge of 70¢ Segunde to Trindad.

Amount claimed	$3,309.24
Amount allowed	3,203.46
Amount disallowed	105.78

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IV.

For the transportation thus furnished claimant submitted bills based upon its published tariffs and authorized rates for contract rates, which rates were the lowest individual rates open to the public available between the initial point and the destination.

V.

That in the settlement of claimant's bills the Auditor for the War Department and the Comptroller of the Treasury, under decisions made a part of the petition herein, allowed for the service on the basis of the individual fare for part of the distance traveled and the

party rate for the balance, thereby disallowing and deducting from claimant's bills $4,063.29.

VI.

In Conference Ruling No. 265, the Interstate Commerce Commission laid down the following rule binding upon claimant:

"The tariffs of certain carriers provide a 10-party fare from A to B, but no such fare from B to C. Upon inquiry whether it would be legal to ticket a party of 10 from A to C on the basis of the party fare from A to B, and the individual fare from A to C: Held that while a party of 10 acting on their own initiative would have the right to use the party fare from A to B and to purchase such transportation as is available from B to C, the carriers may not ticket them through from A to C on such combination, and thus defeat their own published through fare."

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and its petition is therefore dismissed.

VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Twelfth day of January, A. D., 1920, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants and do order, adjudge and decree that the Atchison, Topeka and Santa Fe Railway Company, as aforesaid,
25 is not entitled to recover and shall not have and recover any sum in this action of and from the United States; and that the petition herein be and it hereby is dismissed.

BY THE COURT.

VII. *Claimant's Application for and Allowance of an Appeal.*

Comes now the Atchison, Topeka and Santa Fe Railway Company, petitioner in the above cause, and by counsel prays the Court to grant an appeal to the Supreme Court of the United States, from the decision and judgment of the Court of Claims dismissing said petition, said decision being rendered January 5, 1920.

BRITTON & GRAY,
Attorneys for Petitioner.

Filed February 16, 1920.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

February 16, 1920.

26 Court of Claims.

No. 33214.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law; of the judgment of the court; of the claimant's application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Seventeenth day of February, A. D. 1920.

[Seal Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 27,496. Court of Claims. Term No. 741. The Atchison, Topeka & Santa Fe Railway Company, Appellant, vs. The United States. Filed February 24th, 1920. File No. 27,496.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 256.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY CO., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

Statement.

The above-entitled cause reaches this court by appeal from a final judgment of the Court of Claims dismissing the petition of appellant.

From the findings of fact of the Court of Claims, which practically followed the facts stipulated into the record, the question in issue may be briefly stated.

At various times in 1914 and 1915 appellant, a common carrier of passengers and freight, transported, at the request of authorized agents of the United States, various bodies of Mexican prisoners and troops of the United States.

In exchange for the transportation requests of the United States, the company's agent issued tickets which were used for the transportation and in due season the company submitted its bills based upon its published tariffs and authorized contract rates, which were the lowest individual rates open to the public between the initial point and the destination.

See Finding IV, page 17, Record.

In the settlement of the company's bills the accounting officers of the Government allowed pay upon the basis of an individual fare for part of the distance traveled and party rates for the balance, thus disallowing $4,063.29, notwithstanding that such a combination of fares was not open to the public and the company was expressly forbidden by the Interstate Commerce Commission from making such rates.

Findings V and VI, pages 17 and 18, Record.

The Court of Claims, without opinion, dismissed the company's petition, and upon allowance of appeal the record comes to this court.

Upon the facts so found and stated, this court is called upon to decide:

I.

The power of the accounting officers of the United States, in the absence of any contract so providing, to compel this

company to accept a rate of fare not published or available to the general public.

II.

The power of the accounting officers of the United States to compel this company to accept a rate of fare which it is expressly forbidden to use by the Interstate Commerce Commission.

III.

The power of the accounting officers of the United States to compel this company to accept a rate of fare different from the rate expressly contracted for and lower than any rate open to the general public.

ARGUMENT.

It is axiomatic that the Government is entitled to the lowest rate open to the general public and common carriers *may* contract to carry Government troops and property for less than tariff rates. There is no dispute but that the company could have contracted for the rates offered by the United States, although it could not so contract with the public, but the record shows that it did not do so. Neither do we deny that the Government would be entitled to a party rate had such rate been in effect, but the record shows there were no such rates and under the rulings of the Interstate Commerce Commission there could be none such.

Under such circumstances we have no hesitation in insisting that the accounting officers, in making an unlawful rate of their own, were acting in an arbitrary and unlawful

manner and in deducting $4,063.29 from the company's bills deprived the company of money lawfully due it and for which this court should give judgment.

The strength of the Government's position is disclosed in the opinion of the Comptroller of the Treasury dated June 25, 1915 (page 5 of record), but completely ignores or fails to give proper effect to the controlling facts:

(*a*) That as to a portion of the transportation there was an express written agreement for a specific rate which he had no power to set aside.

(*b*) That the rates he sought to apply were not rates of the company open either to the Government or individuals, but were rates which the company could not lawfully quote the public and which it had not quoted the United States.

The company in this case submitted the Comptroller's opinion to the Interstate Commerce Commission and under date of July 28, 1915 (Record, page 9), were expressly advised that whilst

> "it would be pleasant, of course, if there were no "conflict between the views of the Commission and "those expressed by the Comptroller of the Treasury,"

the Commission adhered to its previously expressed views that common carriers might not combine an individual rate for a portion of the distance traveled with a party rate for the balance of the distance where there was a through individual but not a through party rate.

The position taken by the Comptroller and the Court of Claims shows that the real issue in the case was not understood. They practically hold that the United States is not controlled by the interstate-commerce law, and may accept

or contract for a rate lower than that quoted in the company's published tariffs. There is no dispute as to that contention, but there was no such contract or offer in this case nor any offer upon the company's part to transport the troops at other than regular tariff rates or other rates expressly contracted for and different from those used by the Comptroller.

Aside from the special contract as to a portion of this transportation and which contract has been completely ignored and set aside, the United States, without any special contract or offer sent these passengers over the railroad and thereby obligated itself to pay the lowest rate available to the general public. The rate constructed by the accounting officers was admittedly not such a rate and the company's pay was therefore unlawfully reduced.

IV.

In the Court of Claims the Government referred to the decisions in

> Bush, receiver, 52 Ct. of Cl., 199, and
> Louisville & Nashville, 52 Ct. of Cl., 299,

but manifestly neither of them are in point.

The Bush case decided that "where the United States agreed in writing with the plaintiff to transport certain men and officers *at a specified rate,* and the railroad had previously put into effect a one-way party tariff lower in rate, the defendants cannot take advantage of the lower rate where it appears that they did not apply for the same and did not comply with any of the conditions stated as necessary in order to obtain said lower rates."

This simply means that the United States, like any individual, is bound by contracts, and can have no other application to this case beyond the strange situation that just such a special contract in this case has been wholly ignored.

The Louisville and Nashville case involved the application of a party rate in full force and available to the general public, but which the carrier claimed was not available to the United States because it did not pay cash in advance. The case before us does not involve a party rate available to the public or any one else. It involves an attempt by the accounting officers of the Government to construct a party rate of their own by a combination of a party and individual rate, and thereby to establish a rate not shown in any tariff of the company nor authorized by law.

V.

In the lower court, counsel for the United States expressly and in writing admitted that as to the transportation carried by items III and IV of the petition the accounting officers were wrong upon any theory in not applying the contract rate of $12.80 per capita and admitted judgment for $2,141.85 on these items. For reasons not explained, the Court of Claims dismissed the petition in its entirety. No possible reason known to us, presented by counsel or stated by the court, can be or has been advanced why the company should not have judgment for at least this amount.

VI.

The other items were all for travel between two points, for which no party rate was published, contracted for, or avail-

able. The United States claims the right to construct its own through party rate by combining a published party rate for part of the distance with an individual rate for the balance. Attached to and made a part of the petition in this case is a ruling of the Interstate Commerce Commission that such rate is unauthorized and illegal and the theory of its construction absolutely contrary to law and the regulations thereunder.

In addition, on October 7, 1913, in conference ruling 2209, the Commission held:

> "Upon inquiry as to whether a through distance "tariff rate should be applied in cases where a com- "bination rate, made up of a rate to an intermediate "point and a distance tariff rate beyond, makes a "lower through charge; *Held*, That the through rate "is the only lawful rate."

It must be clear, therefore, that for this transportation, had without special agreement, the United States is entitled to the lowest rate available to the general public, but is not entitled to construct an illegal and unauthorized rate of its own, which was not and could not be used by the public.

Appellant therefore prays a reversal of the judgment appealed from and directions for the Court of Claims to enter judgment for $4,063.29 in appellant's favor.

Respectfully submitted,

ALEXANDER BRITTON,
GARDINER LATHROP,
Counsel for Appellant.

In the Supreme Court of the United States

OCTOBER TERM, 1920.

THE ATCHISON, TOPEKA & SANTA FE Railway Company, appellant, v. THE UNITED STATES. } No. 256.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

During the years 1914 and 1915 the claimant, a railroad common carrier, furnished transportation for officers and enlisted men of the United States Army, at the request of the United States. The specifications of this transportation are set forth in Finding III. (Rec. pp. 14 to 17.) For all the period during which the transportation was furnished the claimant had in force and on file with the Interstate Commerce Commission duly published tariffs showing the rates for transporting passengers between points on its lines of railroad and in connection with other railroads. These tariffs showed that between points for which transportation was so furnished at the request

of the Government there were no through party rates specified from the points of origin to the points of destination of such transportation.

However, though there were no through rates in effect between such points there were duly in effect party rates over the plaintiff's lines, or lines with which it connected, between the points of origin of the transportation and intermediate points, or between intermediate points, or between intermediate points and the points of destination. (Finding II, R. p. 14.) When claimant presented its bills for the transportation furnished, they were based upon the published rates which were the lowest through individual rates open to the public between the initial point and the destination. (Finding IV, R. p. 17.) The accounting officers of the Government in making settlement allowed for the transportation rendered on the basis of the individual fare for part of the distance traveled and the party rate for the balance, and disallowed the difference between the rate thus calculated and the regular through rate charged.

The controversy as to all items except 3 and 4 (Rec. 15, 16) is whether the deductions so made were proper. Items 3 and 4 relate to transportation furnished under special contract. In settlement of bills rendered for this transportation the accounting officers made certain deductions from the rates specified in the contracts. The correctness of such deductions is questioned by the claimant.

The Court of Claims entered judgment dismissing the petition; no opinion was rendered.

ARGUMENT.

It is admitted that the Government, for transportation of its troops and property, is entitled to the lowest rate available to the general public, and that common carriers may contract to carry Government troops and property for less than the published rates. Lawfully published rates for transportation of the general public are the maximum rates that may lawfully be charged for Government transportation.

Section 22 of the interstate commerce act (act of Feb. 4, 1887, chap. 105, 24 Stat. 387, as amended by the act of Mar. 2, 1889, chap. 382, 25 Stat. 855, 862) provides:

> SEC. 22. That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments. * * *

The Interstate Commerce Commission ruled May 27, 1907:

> 218. *Transportation of Federal troops.*—The commission is of the opinion that carriers, either by contract or bid or other arrangement with the War Department, may lawfully make special rates or fares for the movement of Federal troops, when moved under orders and at the expense of the United States Government, and that the rates or fares so made need not be posted or filed with the commission. (See Rulings 33 and 208–e.)
>
> The lawfully published rates or fares for the transportation of the general public, in the

opinion of the commission, are to be regarded, however, as the maximum rates and fares that may lawfully be charged the Government for the movement of Federal troops.

This ruling also governs similar transportation for the naval and marine services. (Ruling does not apply to State or Territorial troops; see Ruling 297.)

While it is true that there was no through party rate for the transportation furnished, it is also true that on each item of such transportation there was a party rate available to the general public for part of the journey. Thus, on the journey from Leavenworth, Kansas, to San Antonio, Texas (item No. 2), while there was no through party rate available, a party of citizens entitled to a party rate could, and undoubtedly would, pay the individual fare from Leavenworth to Kansas City, fifty-five cents, and at Kansas City obtain a party rate from that point to San Antonio, thus obtaining a rate for each individual of the party of $15.85 instead of the through individual rate of $20.16. This was an existing party rate available to the public and of which the public could take advantage. It would seem that it was also the duty of an officer in charge of the transportation of United States troops to take advantage of such rate and the duty of the railroad to furnish transportation for such troops at the lowest rate available to the public, there being nothing to prohibit it from so doing. The findings of fact show that party transportation was, in fact, furnished. Thus, in item 1, the request was for party rates if available

and a party ticket was furnished for a short part of the journey. In item No. 2, one ticket was issued for 25 people; in items Nos. 3 and 4, eight tickets were issued for a number of persons varying from 49 to 243; in item No. 5, one ticket was issued for 135 men; in item No. 6, one ticket was issued for 13 people; in item No. 7, one ticket was issued for 109 passengers; in item No. 8, one ticket was issued for 180 people.

Thus, party transportation having in fact been furnished, the party rate only should be charged for that portion of the journey for which such rate was available. The Government, having requested transportation and the railroad having furnished party service, a contract existed by which the Government was obligated to pay whatever amount was properly chargeable to it for the service rendered. Party transportation having been furnished in fact, the Government was entitled to the party rate to the extent to which such rate was available to the general public.

The Government relies upon the opinion of the Comptroller dated June 25, 1915, upon this precise question, set forth on pages 5 to 7 of the record. Conference Ruling No. 265 of the Interstate Commerce Commission (Finding VI, R. 18) is binding upon the railroad in its dealings with the public; a lower rate than the published rate can not be given to the general public, but this is not true as to the Government. This ruling is not applicable to this case.

The transportation furnished as set forth in Items 3 and 4 was by a specific contract at a rate calculated on the basis of the local party fare from El Paso to Albuquerque and the individual fares from Albuquerque to Wingate and Fort Bliss to El Paso.

The contract provided:

> The above rates are net cash not subject to further deduction unless it be subsequently found that they are in excess of regular tariff rates, less land grant or other lawful deductions to which the Government is entitled, when lower rate will govern in settlement.

The Government was lawfully entitled to a land-grant deduction from the rate for transportation from Albuquerque to Wingate. (Act of July 27, 1866, ch. CCLXXVIII, 14 Stat. 292; War Dept. G. O. No. 47, Apr. 6, 1901, p. 16.) This deduction was therefore accordingly made in settlement of the bill for transportation and such deduction is specifically authorized by the contract. In Finding III, p. 16, it is, through error, stated that this deduction was on account of the distance from El Paso to Albuquerque.

Respectfully submitted.

FRANK DAVIS, JR.,
Special Assistant to the Attorney General.

MARCH 18, 1921.

○

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 256. Submitted March 22, 1921.—Decided April 18, 1921.

1. In the absence of a previous arrangement with the carrier for reduced rates under § 22 of the Interstate Commerce Act, the United States, by requesting and accepting interstate railway transportation for officers and men of the Army, obligates itself to pay the rates applicable generally for like transportation, less any lawful land grant deduction. P. 206.
2. Where the only through interstate tariff rate between two places is the individual rate, through transportation of a party should be charged at that rate and cannot lawfully be charged less by combining a party rate applicable to a part of the distance only with the individual rate applicable to the remainder. P. 206.
3. The through individual rate, in such case, *held* the "regular tariff rate," within the meaning of a contract between the carrier and the United States for the transportation of soldiers. P. 207.

55 Ct. Clms. 528, reversed.

APPEAL from a judgment of the Court of Claims rejecting the claim of a railroad company for balances due for transportation of soldiers for the United States. The facts are stated in the opinion.

Mr. Alexander Britton and *Mr. Gardiner Lathrop* for appellant.

Mr. Frank Davis, Jr., Special Assistant to the Attorney General, for the United States.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

On several occasions in 1914 and 1915 the railway company at the request of the United States furnished

transportation from one State to another for officers and enlisted men in the United States Army. In each instance a through individual rate from the initial point to the destination was in force, and also individual rates to and from intermediate points. In no instance was there a through party rate; but in all there was a party rate for a part only of the distance. This situation was shown in schedules regularly filed and posted under the Interstate Commerce Act. In two instances the transportation was furnished under a contract calling for a special reduced rate for the full trip, and in the others it was furnished without any prior contract or special arrangement. Bills for the transportation,—computed in the two instances at the contract rate, and in the others at the through individual rate with appropriate land grant deductions,—were presented to the accounting officers, who allowed a part of what was claimed in each bill and disallowed the balance. The company then brought this suit in the Court of Claims to recover the part disallowed and the court, without opinion, sustained the action of the accounting officers.

As to the transportation furnished without a prior contract or special arrangement the accounting officers proceeded on the theory that the collectible rate should be determined by combining the party rate covering a part only of the distance and the individual rate for the remainder and then making any necessary land grant deductions, and not by taking the through individual rate, less any deductions, arising from land grants, as claimed by the company. In this we think the accounting officers erred. The service requested and rendered was a through service. The only rate applicable to a like service for others was the through individual rate. By requesting and accepting the service without some special arrangement for a different rate the United States assented to and became obligated to pay that rate. Under a provision

in the Interstate Commerce Act the United States could have arranged with the company for a different and reduced rate, if the company was so disposed (c. 382, § 22, 25 Stat. 862); but that was not done. In the absence of such an arrangement, the company's duty to the United States was merely that of serving it at rates no higher than those applied to individuals for like transportation, c. 278, § 5, 14 Stat. 295, less any lawful land grant deduction. No individual could require that the party rate covering a part only of the distance and the individual rate for the remainder be taken as the through rate, or as the lawful rate for a through service. Neither could the United States do so in the absence of some prior arrangement to that effect. The situation as respects individuals is aptly stated in Conference Ruling No. 268 of the Interstate Commerce Commission, which is as follows:

"The tariffs of certain carriers provide a 10-party fare from A to B, but no such fare from B to C. Upon inquiry whether it would be legal to ticket a party of 10 from A to C on the basis of the party fare from A to B and the individual fares from B to C when such combination makes less than the joint through individual fare from A to C: Held, That while a party of 10 acting on their own initiative would have the right to use the party fare from A to B and to purchase such transportation as is available from B to C, the carriers may not ticket them through from A to C on such a combination and thus defeat their own published through fare."

The contract under which some of the transportation was furnished called for a rate of $12.80 per man for the full trip, unless that rate should be found to be in excess of the "regular tariff rate," less land grant deductions, in which event the "lower rate" was to govern. The accounting officers proceeded on the theory that the regular tariff rate was to be determined by combining the party rate covering a part only of the distance and the individual

rate for the remainder; and, finding that the rate so constructed, less a land grant deduction, was lower than the contract rate, they rejected the latter and gave effect to the new rate which they had constructed. They proceeded on a mistaken theory. The through individual rate was the only regular tariff rate which was applicable. It, less any land grant deduction, should have been compared with the contract rate ($12.80), and whichever was lower should have been treated as controlling.

The findings relating to the transportation under the contract do not show what the through individual rate was, and therefore the suit cannot be finally determined here.

The judgment is accordingly reversed and the suit is remanded to the Court of Claims with directions to reexamine the company's claim and award a judgment conforming to the views herein expressed.

Judgment reversed.